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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Hector Medina-Rosas,

13 Defendant.
14

No. CR-18-00189-001-TUC-JGZ (BPV)

ORDER

15 The pending motion to suppress (Doc. 41) challenges a pretextual traffic stop of
16 Defendant Hector Medina-Rosas by Pima County Sheriff's Deputy Carlos Ruiz. Deputy
17 Ruiz testified that on September 20, 2017, he was working as part of the Border Interdiction
18 Unit. The primary purpose of this unit is to cooperate with federal agencies to stop vehicles
19 that are believed to be involved in drug and weapons trafficking. Agent Ruiz testified that
20 he was provided information about Defendant's vehicle in relation to a weapons violation
21 investigation, and was asked to develop independent reasonable suspicion to stop the
22 vehicle and to attempt to search the vehicle.

23 After an evidentiary hearing, at which Deputy Ruiz was the sole witness, Magistrate
24 Judge Bernardo P. Velasco issued a Report recommending denial of the motion to suppress.
25 (Doc. 60.) Judge Velasco concluded that Deputy Ruiz had reasonable suspicion to stop
26 Defendant's vehicle for failure to yield by moving to the right-hand lane, which is a traffic
27 violation. (Doc. 60.) In his Report and Recommendation (R&R), Judge Velasco found:
28 "Ruiz, intended, if possible, to effect the stop. If he could not develop an appropriate reason

1 to stop [the defendant's vehicle], he was not going to stop, but rather leave it alone and let
2 it proceed wherever it was going." (Doc. 60, p. 2). Judge Velasco concluded, "there is no
3 doubt that Deputy Ruiz would not stop the vehicle if no such cause existed." (*Id.* at 3.)

4 Defendant filed his Objection to the R&R on October 5, 2018, and the Government
5 filed a Response on October 16, 2018. (Docs. 68, 71.) Defendant challenges Magistrate
6 Judge Velasco's legal conclusion that the traffic stop was supported by reasonable
7 suspicion. Defendant argues that Judge Velasco erred by relying on Deputy Ruiz's
8 testimony, which was not credible because: (1) Deputy Ruiz omitted material facts from
9 his incident reports in order to obscure the actual motivation for the stop (Doc. 68 at 3); (2)
10 Deputy Ruiz's testimony was inconsistent with his written report of the incident; and (3)
11 the conditions on the night of the stop did not support Deputy Ruiz's claim that a violation
12 of the traffic laws occurred. (Doc. 68.) Defendant asserts Deputy Ruiz's testimony should
13 have been discounted in its entirety and concludes that Deputy Ruiz had no independent
14 basis for making a traffic stop, and that he did so anyway, manufacturing a traffic violation
15 in his incident report.

16 Upon independent review of the record the Court will adopt the R&R (Doc. 60) and
17 will deny Defendant's motion to suppress. (Doc. 41.)

18 **STANDARD OF REVIEW**

19 The Court reviews *de novo* the objected-to portions of the R&R. 28 U.S.C. §
20 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for clear error the unobjected-to
21 portions of the R&R. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999);
22 *see also Conley v. Crabtree*, 14 F.Supp.2d 1203, 1204 (D. Or. 1998). If the Court rejects
23 the credibility findings of the magistrate judge, a *de novo* hearing is required. *United States*
24 *v. Ridgeway*, 300 F.3d 1153, 1157 (9th Cir. 2002).

25 **FACTUAL BACKGROUND**

26 Judge Velasco found that Deputy Ruiz had reasonable suspicion to stop Defendant's
27 vehicle. The R&R states:

28 [Deputy Ruiz] observed the vehicle traveling north through a construction
zone. Deputy Ruiz drove up to a vehicle directly behind the Jetta. The two

1 vehicles in front [of] Deputy Ruiz were traveling at about the same speed,
2 although it appeared the vehicle behind the Jetta was traveling too close. At
3 that time, Deputy Ruiz noticed at least two more vehicles came up behind
4 the first three cars. Altogether five or more cars were on the inside passing
5 lane. As Deputy Ruiz was pacing the Jetta to determine its speed, all vehicles
6 passed at least one, if not two signs, stating that slower traffic must keep to
the right. In the course of this pursuit, Deputy Ruiz could observe that there
were no vehicles in front of the Jetta obstructing his ability to proceed at a
speed of 55 m.p.h. or to move into the right lane. Based upon his
observations, Deputy Ruiz concluded that the Jetta was delaying the orderly
flow of traffic and violating the directive to move to the right.

7 (Doc. 60, p. 2.)

8 In concluding that Deputy Ruiz had reasonable suspicion to stop Defendant's vehicle,
9 Judge Velasco reasoned that Defendant was required to move to the right lane because he
10 and the four vehicles trailing him were traveling in the left lane of a two-lane road at 45
11 miles per hour in a 55 mile per hour speed zone. As the lead vehicle, Defendant was
12 required to yield the passing lane to the trailing vehicles. (Doc. 60 at 3.)

13 ANALYSIS

14 An officer may conduct a traffic stop without violating the Fourth Amendment if
15 the stop is supported by reasonable suspicion that a crime is, has been, or will soon be
16 committed. *United States v. Choudhry*, 461 F.3d 1097, 1100 (9th Cir. 2006). "[T]he
17 decision to stop an automobile is reasonable where the police have probable cause to
18 believe that a traffic violation has occurred." *Whren v. United States*, 517 U.S. 806, 810
19 (1996); *Choudhry*, 461 F.3d at 1100.

20 Having reviewed Deputy Ruiz's testimony, the Court agrees with Judge Velasco's
21 conclusion that Deputy Ruiz had reasonable suspicion to stop Defendant's vehicle for a
22 traffic violation. A.R.S. § 28-644 requires drivers to "[o]bey the instructions of an official
23 traffic control device" A.R.S. § 28-721(B) provides that "[o]n all roadways, a person
24 driving a vehicle proceeding at less than the normal speed of traffic . . . shall drive the
25 vehicle in the right-hand lane then available for traffic. . . ." If a roadway is divided into
26 two or more clearly marked lanes for traffic, A.R.S. § 28-729(3) further provides that
27 "[o]fficial signs may be erected directing slow-moving traffic to use a designated lane . . .
28 and drivers of vehicles shall obey the directions of every sign."

1 Deputy Ruiz testified that on September 20, 2017, he observed the Defendant driving
2 in the left lane of a two-lane road at 45 miles per hour, through a construction zone with a
3 posted speed limit of 55 miles per hour; at least four cars were stacked up behind
4 Defendant's car; no cars were traveling in front of Defendant's vehicle; and Defendant
5 passed at least two signs directing slower traffic to keep to the right. (Doc. 60 at 2.)

6 After a careful review of the testimony, the Court rejects the suggestion that Deputy
7 Ruiz manufactured a justification for the stop after the fact. Deputy Ruiz credibly
8 explained the labeling of his report, including the agency's practice of using restricted
9 supplemental reports. Defendant takes Deputy Ruiz's testimony regarding when he first
10 observed the traffic sign out of context. Ruiz testified that he saw the sign as he approached
11 it and it was clearly visible, even at night. (9/17/18 Tr. at 13:20-24.) Ruiz testified that he
12 first identified the defendant's vehicle north of the Pima Mine Road exit, past the active
13 construction zone. (*Id.* at 7:9-10, 8:2-5). During his pace of Defendant's vehicle, the
14 defendant passed by a traffic control device which stated "Slower Traffic Keep Right." (*Id.*
15 at 9:20-25, 10:1-2.)

16 Similarly, Deputy Ruiz's testimony that the vehicle behind the Defendant's vehicle was
17 following too close and that Deputy Ruiz was able to position himself directly behind the
18 Defendant is not contradictory. Deputy Ruiz testified that he identified the Defendant's
19 vehicle and paced it for roughly one mile. (9/17/18 Tr. at 8:20-21, 45:21-22.) Deputy Ruiz
20 noted that the vehicle directly behind the Defendant's was less than a car length away from
21 the Defendant's vehicle. (*Id.* at 8:14-15.) During cross-examination, Ruiz's explained that
22 he was "eventually able to overtake" the car in front of him and get behind Defendant. (*Id.*
23 at 39:4-6.)

24 *United States v. Plascencia*, 2015 WL 631277 (D. Ariz. 2015), does not compel a
25 different result. Although the *Plascencia* decision held that no reasonable suspicion existed
26 to support a traffic stop based on a car's failure to move to the right lane in violation of
27 A.R.S. § 28-721, there the court found that "the video reflects that [the defendant's vehicle]
28 was moving with traffic at a speed close to or equal to the speed limit." *Id.* at *3. That is

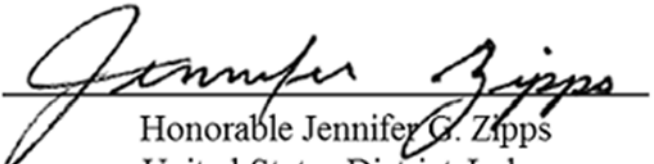
1 not the case here. There is no evidence that contradicts Deputy Ruiz's testimony that
2 Defendant was driving under the posted speed limit, trailed by other vehicles, in the fast
3 lane.

4 For the foregoing reasons, the Court concludes that Deputy Ruiz had reasonable
5 suspicion to stop Defendant's car.

6 THEREFORE, IT IS ORDERED that the Report and Recommendation (Doc. 60) is
7 ADOPTED.

8 IT IS FURTHER ORDERED that Defendant's Motion to Suppress (Doc. 41) is
9 DENIED and his Objections (Doc. 68) are OVERRULED.

10 Dated this 21st day of December, 2018.

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14 Honorable Jennifer G. Zipps
15 United States District Judge
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